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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA, Plaintiff, vs. STEVEN DEMOCKER, Defendant	**V1300CR2008-1339** **REQUEST FOR ENFORCEMENT OF COURTS ORDERS / ORDER TO SHOW CAUSE** **(Hon. Warren Darrow)**

COMES NOW the Defendant, by and through counsel undersigned, and moves the Court to Hear and Decide this Motion concerning confinement conditions, per Rule 7.2(a)[1], Articles 4 and 24 of the Arizona Constitution, the 6th Amendment of the U.S. Constitution, Washington v. Texas, 388 U.S. 14, (1967), Montana v. Egelhoff, 518 U.S. 37 (1996).

The Defendant has a right to present a defense. Washington v. Texas, 388 U.S. 14 (1967). This necessarily includes the right to *prepare* a defense. Due process demands that a criminal defendant be afforded a fair opportunity to defend against the state's accusations. Meaningful

[1]Rule 7.2(a) **Right to release**: Any person charged with an offense bailable as a matter of right ***shall be released pending or during trial on the person's own recognizance***, unless the court determines, in its discretion, that such a release will not reasonably assure the person's appearance as required. If such a determination is made, the court may impose the ***least onerous conditions*** ... which will reasonably assure the person's appearance.

adversarial testing of the State's case requires that the defendant not be prevented from raising an effective defense, which must include the right to present relevant, probative evidence. Montana v. Egelhoff, 518 U.S. 37 (1996).

The Defendant specifically requests that this Court enforce the Orders concerning release conditions previously decided on January 12, 2010. The January 12, 2010 MEO stated:

> Court **DENIES** the request for modification of release conditions. ***However, the Court will enter an order affirming the Defendant's ability to assist in his own defense.*** The Court will **ORDER** the Yavapai County jail, through the Yavapai County Sheriff's Officer, to provide the Defendant with a secure room with a power plug in order to have access to a computer with external hard drive provided by Defense Counsel that includes all disclosure material. The Court places no restriction on YCSO to provide for the security of the facility in terms of wandering or searching that is normally done to insure the safety of this inmate and any other inmates. ***The Court authorizes the Defendant to have access to this secure room and computer for at least 8 hours a day.*** The Court **ORDERS** that YCSO also evaluate whether or not a secure phone line can be provided in the room as well. The Court believes that the Defendant should also have a headset to preserve attorney-client privilege. The Court directs Defense Counsel to submit a proposed form of order by Friday morning and to have Counsel for State review the order as to form. YCSO is to provide an answer with respect to the secure phone line by **Friday, January 15, 2010**.

(January 12, 2010 MEO, emphasis added).

On January 13, 2010, Judge Lindberg signed an Order, which further cemented the issue. The January 13, 2010 Order clearly stated that the Defendant could work on his case at least 8 hours a day, *seven days a week.* (1-13-2010 Order, attached). This necessarily means he can work out of solitary.

If those Orders are not complied with, then an Order To Show Cause Hearing is Required with the Jail Commander. The state's parroting "jail policy" simply is not sufficient. The Superior Court has the authority to address this issue:

> Addressing what the Sheriff refers to as his "jurisdiction" argument, we first observe that this label is imprecise given that the superior court has original or concurrent subject-matter jurisdiction over all criminal cases arising in Arizona. Ariz. Const. art. 6, § 14(4); A.R.S. § 12-123(A) (2003). As our supreme court noted in Taliaferro v. Taliaferro, 186 Ariz. 221, 223, 921 P.2d 21, 23 (1996), "the word 'jurisdiction' means different things in different contexts. In one context, it may mean the authority to do a particular thing. In another, it may mean the power of the court to entertain an action of a particular subject matter. These are very different uses." As the Sheriff candidly acknowledges, a regularly assigned trial judge would have the authority to devise an appropriate remedy for an ongoing deprivation of a defendant's Sixth Amendment right to counsel in a pending case.

Arpaio v. Baca, 217 Ariz. 570, 575-576, 177 P.3d 312, 317 - 318 (Ariz.App. Div. 1,2008).

> ***To be sure, courts have the inherent authority and obligation to provide relief to defendants from jail regulations or decisions by prison administrators that significantly interfere with or unreasonably burden the exercise of their Sixth Amendment right to access to counsel.*** See, e.g., Cobb v. Aytch, 643 F.2d 946, 957 (3rd Cir.1981) (granting injunctive relief in class action enjoining prison transfers that "significantly interfered" with pretrial detainees' access to counsel"); see also Wolfish v. Levi, 573 F.2d 118, 133 (2nd Cir.1978) (granting injunctive relief in class action in which prison regulations restricting pretrial detainees' contact with their attorneys were found unconstitutional because they "unreasonably burdened the inmate's opportunity to consult with his attorney and to prepare his defense"), vacated in part on other grounds by 441 U.S. 520, 99 S.Ct. 1861, 60 L.Ed.2d 447 (1979).

Id., at 579, 321 (emphasis added).

In this case the Court has already issued Orders, which were *specific* and tailored to this Defendant, which the Court had lawful authority to do.

> The Sheriff does not contend that he cannot be constrained in the performance of his duties when it is necessary to protect a particular defendant's constitutional right of access to counsel, but he objects to the all-inclusive nature of Judge Baca's order. We agree with the Sheriff that the proper role of the superior court in this consolidated criminal hearing was limited to determine whether specific Sixth Amendment violations existed in each of the actual cases it considered, and, if so, to devise an appropriately tailored remedy for each case.

Id.

> ... the case law does not support a privileged visitation schedule that significantly

> interferes with or unreasonably burdens the exercise of a defendant's Sixth Amendment rights regardless whether the justification for doing so is based on security concerns or financial considerations.

Id., at 580, 322.

Currently, the Defendant is locked down 23.5 hours a day. He has been for an extended period. Counsel was told by the state at the last hearing that this status is "permanent." An important fact is that the half-hour that he is out of lock-down each day *rarely* occurs during business hours, when a reasonable person could expect to reach their attorney. During that half-hour the Defendant has to do other things, such as cleaning himself, his cell, make calls to family, and attempt to get some exercise by walking laps around the day room.

Most importantly, under any analysis, the half-hour that he is out of lock-down each day cannot be considered enough to assist in his defense.

Counsel undersigned called twice in one day last week to talk with the Defendant, but never received a call. We did have a video conversation on Friday – which was scheduled in advance. At that time, the Defendant was asked by Counsel if he had been told Counsel called, whether he was told to call Counsel, or allowed to get out of lock-down to call Counsel, and he said "NO." This was not the first time this has happened in the short time since Counsel undersigned has been on this case!

> In Beasley v. United States, 491 F.2d 687, 696 (6th Cir. 1974), the 6th Circuit Court of Appeals held 'that the assistance of counsel required under the Sixth Amendment is counsel reasonably likely to render and rendering reasonably effective assistance.' *It specifically rejected the mockery of justice standard.* In our view, it is the substance of the standard which is significant. As stated by the United States Court of Appeals for the 9th Circuit, 'the constitutional requirement of representation at trial is one of substance, not of form.' Brubaker v. Dickson, 310 F.2d 30, 37 (9th Cir. 1962). A defendant is entitled to a fair trial and as a part of that right he is entitled to competent counsel.

State v. Watson, 114 Ariz. 1, 13-14, 559 P.2d 121, 133 - 134 (Ariz. 1976)

How many times does the state want to try this case? No conviction can escape appellate scrutiny if the defendant was denied the ability to assist in his defense. If the state was unhappy with the January 12-13, 2010 Orders, they had a way to pursue a remedy, but did not. The Doctrine of Laches should apply to a case like this.

> "[T]he laches doctrine seeks to prevent dilatory conduct and will bar a claim if a party's unreasonable delay prejudices the opposing party or the administration of justice." Lubin v. Thomas, 213 Ariz. 496, 497, 144 P.3d 510, 511 (2006).

McLaughlin v. Bennett, 238 P.3d 619, 621 (Ariz.,2010).[2]

In addition, the lock-down has been in effect during a major change in he Defendant defense teams. The Defendant cannot acclimate to new counsel, and help prepare his defense if we cannot communicate on a daily basis[3], if needed.

It is time to for the state to communicate with the jail, and allow the Defendant to talk with his attorney, and to work on his case – outside of solitary – 8 hours a day, seven days a week per the Court's Orders. The Sixth Amendment guarantees a criminal defendant the right to "Assistance of Counsel for his defence [sic]." The Arizona Constitution similarly guarantees the right to "appear and defend in person and by counsel." Ariz. Const. art. II, § 24.

If the Orders cannot be reasonably complied with, commencing November 23, 2010, then the Defendant is asking this Court to find an ongoing interference with the 6th Amendment,

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[2] In McLaughlin v. Bennett, "the question presented is whether Proposition 108, a constitutional amendment referred to the people by the legislature, complies with the separate amendment rule of Article 21, Section 1 of the Arizona Constitution. The superior court concluded that Proposition 108 violates that rule."

[3]While the video conferencing is a fantastic option, it cannot be considered a substitute for the ability to communicate when necessary. Phone calls are a vital option.

supra, and Order an immediate O.R. release (own recognizance).

If this Court denies the that modifications, the Defendant requests the bond be reduced to $50,000.00.

RESPECTFULLY SUBMITTED this November 22, 2010.

By _____
Craig Williams
Attorney for the Defendant

Copies of the foregoing delivered this date to:
Hon. Warren Darrow, Judge of the Superior Court
Joe Butner, Jeff Paupore, Yavapai County Attorney's Office

By:_____

BORN MALEDON PA.

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA JAN 15 2009

IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

vs.

STEVEN CARROLL DEMOCKER,

Defendant.

No. P1300CR20081339

Div. 6

FILED 9:50 o'clock A m

ORDER

JAN 13 2010

JEANNE HICKS, Clerk

BY Deputy

The Court, having been fully advised, and in order to secure Defendant's rights under the Sixth Amendment to the effective assistance of counsel and to meaningfully assist in his own defense, hereby

ORDERS that:

1. The Yavapai County Sheriff ("YCSO") shall forthwith provide Defendant access, in a secure and private room at the Camp Verde Detention Center, for at least eight (8) hours per day, seven (7) days per week, to a computer provided by Defendant's attorneys or their agents for the purpose of accessing his defense case materials in this matter. The room must be equipped with a power outlet;

2. The computer, which may be password encrypted to maintain its confidentiality, may have external storage devices, a keyboard and mouse and audio headphones, but may not have wireless internet access enabled;

3. YCSO shall have until 5:00 p.m. MST on Friday, January 15, 2010 to report to this Court any reason they may assert as to why Defendant should not immediately be provided access to a secure and private telephone line in the room where the computer is located to permit him to contact his attorneys, consultants, experts, and defense team while using the computer. If any such report from YCSO is

[X] County Atty(e) [X] Def Atty John Sears(e)
[X] Victim Witness(e) [X] Lacy Hammond / Anne Chapman
[ ] APD [X] YSCO/Jail(e) [ ] YSCO/Warrants
[ ] DOC [ ] Div. _____ w/file TOTAL 1
[ ] Other _____ [ ] Other _____
[ ] Dispo. Clk. w/file [ ] Obligations

timely received, the Court, after notice to the parties and an opportunity to be heard, shall make such further orders as may be appropriate under the circumstances;

4. Defense counsel or their agents shall be permitted, with advance notice to YCSO, to have periodic access to the computer and storage devices for the purpose of updating its contents.

DONE IN OPEN COURT THIS 13 day of January, 2010.

The Hon. Thomas B. Lindberg
Judge of the Superior Court
Division Six

APPROVED AS TO FORM AND CONTENT:

Joseph C. Butner III
Deputy Yavapai County Attorney